(5)

FILED
MAY 10 2004
OFFICE OF THE CLERK

No. 03-583

IN THE

Supreme Court of the United States

JOSUE LEOCAL,

Petitioner,

v.

UNITED STATES ATTORNEY GENERAL, IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 29, 2003
CERTIORARI GRANTED FEBRUARY 23, 2004

JOINT APPENDIX

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA		119
CRIMINAL DIVISION	UNIFORM COMMITMENT TO CUSTODY OF DEPARTMENT OF CORRECTIONS SPRING TERM, 1999	CASE NUMBER 00-697
THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT		CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID STATE, GREETING:

The above named defendant having been duly charged with the offense specified herein in the above styled court, and the defendant having been duly convicted and adjudged guilty of and sentenced for said offense by said Court, as appears form the attached certified copies of indictment/information, Judgment and Sentence which are hereby made parts hereof:

Now therefore, this is to command you, the said sheriff, to take and keep and , within a reasonable time after receiving this commitment, safely deliver the defendant, together with any pertinent Investigation Report prepared in this case, into the custody of the Department of Corrections of the State of Florida to Reception Center designated by the Department of

Corrections; and this is to command you, the Department of Corrections and other officials. to keep and safely imprison the defendant for the term of said sentence in the institution in the state correctional system to which you may cause the defendant to be conveyed or thereafter transferred. And these presents shall be your authority for the same. Herein fail not.

[Stamped:CIRCUIT AND COUNTY COURTS, Dade County Florida]
WITNESS the Honorable STANFORD BLAKE
Judge of said Court, and also, Clerk and Seal thereof, this 30TH day of OCTOBER, 2000. HARVEY RUIN, Clerk
By FRANKIE HAMILTON 5389, [Signed: Frankie Hamilton]
Deputy Clerk
CLK/CT 403 6/94

[Stamped/Handwritten: EXHIBIT 2
Marked for Identification ☒
Admitted ☒ 2/22/01

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA ☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA	153

DIVISION	JUDGMENT	
☒ CRIMINAL ☐ OTHER	☐ Probation Violator ☐ Community Control Violator ☐ Retrial ☐ Resentenct	CASE NUMBER 00-697

THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT	CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

The Defendant, JOSUE LEOCAL , being personally before this Court represented by L. MARTIN, his attorney of record, and the State represented by J. DIMITRIS, Assistant State 's Attorney, and having:
☐ been tried and found guilty
☒ entered a plea of guilty
☐ entered a plea of nolo contendere
to the following crime(s):

COUNT	CRIME	OFFENSE STATUTE NO.	DEGREE OF CRIME	OBTS NO.
1 & 2	DRIVING UNDER THE INFLUENCE	316.193(3)(C)2	3F	

	CAUSING SERIOUS BODILY INJURY			

and no cause being shown why the Defendant should not be adjudicated guilty. IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

FH 11/1/00 Page 1 of 3

CLK/CT 401 REV 4/97

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA ☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA	153

DIVISION ☒ CRIMINAL ☐ OTHER	CHARGES/COSTS/FEES	CASE NUMBER 00-697

THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT	CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

The Defendant is hereby ordered to pay the following sum if checked:

☐ Fifty dollars ($50.00) pursuant to F.S. 938.03 (Crimes Compensation Trust Fund).
☐ Five dollars ($5.00) as a court cost pursuant to F.S. 938.01 (1) $3.00, F.S. 938.15 $2.00 (Criminal Justice Trust & Education Funds).
☐ A fine in the sum of $ _____ pursuant to F.S. 775.0835. (This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as a part of a sentence to F.S. 775.083 are to be recorded on the Sentence page(s)).
☐ Twenty dollars ($20.00) pursuant to F.S. 938.09 (Handicapped and Elderly Security Assistance Trust Fund).
☐ A sum of $ _____ pursuant to 938.05 (Local Government

Criminal Justice Trust Fund).
☐ Restitution in accordance to the attached order.
☐ Three dollars ($3.00) Juvenile Assessment Center pursuant to Dade County Ordinance 96-182, F.S. Incorporating F.S. 938.17.
☐ A sum of $_____ pursuant to F.S. 27.52 (Public Defender Application Fee).
☐ A sum of $_____ pursuant to F.S. 939.18 (Court Facilities Cost).
☐ A sum of $_____ pursuant to F.S. 938.06 (Crime Stopper's Programs).
☐ A sum of $_____ pursuant to F.S. 938.19 (Teen Courts).
☐ A sum of $_____ pursuant to F.S. 775.083 (Crime Prevention Programs).

Other COURT COSTS PREVIOUSLY IMPOSED ON SEPTEMBER 15, 2000

DONE AND ORDERED in Open Court in Dade County, Florida this 30TH day of OCTOBER, 2000.

[Signed: Stanford Blake]

JUDGE
STANFORD BLAKE

CLK/CT 413 REV 1/00

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT
IN AND FOR DADE COUNTY, FLORIDA
☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA

DIVISION ☒ CRIMINAL ☐ OTHER	FINGERPRINTS OF DEFENDANT	CASE NUMBER 00-697
THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT		CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

FINGERPRINTS AND SOCIAL SECURITY NUMBER OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
NO PREV	FINGER VIOUSLY	PRINTS TAKEN ON	TAKEN SEPTEM	BER 15, 2000
1. L. Thumb	2. L. Index	3. L. Middle	4. L. Ring	5. L. Little

Fingerprints taken by: _____
Name Title
Defendant's social Security number is _____

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the Defendant, _____ and that they

were placed thereon by said Defendant in my presence in Open Court this date, and that the defendant either

☐ provided the above-mentioned social security number.

OR

☐ was unable or unwilling to provide his/her social security number.

DONE AND ORDERED in Open Court in Dade County, Florida this 30TH day of OCTOBER, 2000.

[Signed: Stanford Blake]

JUDGE
STANFORD BLAKE

CLK/CT 854 1/00

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION	SENTENCE (AS TO COUNT 1)	CASE NUMBER 00-697 OBTS NUMBER _____
THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT		CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

The defendant, being personally before this Court, accompanied by his attorney, L. MARTIN, and having been adjudicated guilty herein, and the Court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown and the Court having:

☐ on _____ deferred imposition of sentence until this date.

(Check one)

☐ previously entered a judgment in this case on the defendant now resentences the defendant.

☐ placed the defendant on Probation/Community Control and having subsequently revoked the defendant's probation/Community Control.

IT IS THE SENTENCE OF THE COURT that the defendant:

☐ pay a fine of $_____, pursuant to F.S. 775.083, plus

$_____ as the 5% surcharge required by F.S. 938.04.

☒ is hereby committed to the custody of the Department of Corrections.

☐ is hereby committed to the custody of the Sheriff of Dade County, Florida.

☐ is sentenced as a youth offender in accordance with F.S. 958.04.

TO BE IMPRISONED (check one; unmarked sections are inapplicable)

☐ for a term of Natural Life.

☐ for a term of TWO POINT FIVE (2.5) YEARS.

☐ said SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

☐ IT IS FURTHER ORDERED that the entry of sentence be suspended as to count(s) _____of this case.

AS TO COUNT 2, THE DEFENDANT IS PLACED ON PROBATION IN A SEPARATE ORDER HEREIN.

Defendant JOSUE LEOCAL
Case Number 00-697

If "split" sentence complete either of paragraphs

X Followed by a period of TWO AND ONE HALF (2 1/2) YEARS on Probation under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

_ however, after serving a period of ____ imprisonment in _____, the balance of such sentence shall be suspended and the Defendant shall be placed on Probation/Community Control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms

SPECIAL PROVISIONS
(As to Count _____)

By appropriate notation, the following provisions apply to the sentence imposed:
MANDATORY/MINIMUM PROVISIONS:

FIREARM:	SEMI-AUTOMATIC FIREARM OR MACHINE GUN:
__Possession	__Possession

__Discharged
__Discharged causing great bodily harm

__Discharged
__Discharged causing great bodily harm

It is further ordered that the _____ mandatory minimum imprisonment provisions of Florida Statute 775.087(2) are hereby imposed for the sentence specified in this count.

DRUG TRAFFICKING: _____ It is further ordered that the ____ mandatory minimum imprisonment provisions of Florida Statute 893.135(1) are hereby imposed for the sentence specifice in this count.

CONTROLLED SUBSTANCE WITHIN 1000 FEET OF SCHOOL: _____ It is further ordered that the three year minimum imprisonment provisions of Florida Statute 893.13(1)(e)1, are hereby imposed for the sentence specified in this court.

FELONY OFFENDER: _____ The defendant is adjudicated a
____ habitual violent felony offender
____ violent career criminal
and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084(4). A minimum term of ____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open

court.]

REPEAT SEXUAL OFFENDER: _____ It is further ordered defendant shall serve a minimum of ____ years before release in accordance with Florida Statute 775.0823.

LAW ENFORCEMENT PROTECTION ACT: _____ AGGRAVATED ASSAULT UPON LAW ENFORCEMENT OFFICER.
_____ AGGRAVATED BATTERY UPON LAW ENFORCEMENT OFFICER
____ 3 years provision of Florida Statute 784.07(2)(c)
____ 5 years provision of Florida Statute 784.07(2)(d)

AGGRAVATED ASSAULT or BATTERY UPON PERSON OVER 65 YEARS OF AGE: _____ It is further ordered that the defendant shall serve a minimum of three years or imprisonment before release, pay a fine of $_____, complete _____ hours of community service and make restitution to the victim in accordance with Florida Statute 784.08.

CAPITAL OFFENSE: _____ it is further ordered that the Defendant shall serve no less than 25 years in accordance with Florida Statute 775.082(1).

PRISON RELEASE REOFFENDER:	____	The defendant is adjudicated a Prison Release Reoffender and has been sentenced to a maximum term in accordance with the provision of Florida Statute 775.0828(8). It is further ordered that the Defendant shall not be released until the expiration of the sentence.

CLK/CT 405 REV. 9/99

Defendant JOSUE LEOCAL
Case Number 00-697

OTHER PROVISIONS

RETENTION OF JURISDICTION	____	The Court retains jurisdiction over the defendant pursuant to Florida Statutes 947.16(3).
JAIL CREDIT	__X__	It is further ordered that the Defendant shall be allowed a total of 253 days as credit for time incarcerated prior to imposition of this sentence.
PRISON CREDIT	____	It is further ordered that the Defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.
CONSECUTIVE/ CONCURRENT AS TO OTHER COUNTS	____	It is further ordered that the sentence imposed for count(s) _____ shall run (check one) ☐ consecutive to ☐ concurrent with the sentence set forth in count(s) _____ of this case.
CONSECUTIVE/ CONCURRENT AS TO OTHER CONVICTIONS	____	It is further ordered that the sentence imposed for count(s) _____ shall run (check one) ☐ consecutive to ☐ concurrent with the following: _____ Any active sentence

being served.

_____ Specific sentences:

_____

_____

BLOOD SAMPLE REQUIRED

_____ It is further ordered, pursuant to section 943.325, Florida Statutes, that the defendant, having been convicted of an attempt or offense under section 794 (sexual battery), 800 (lewdness or indecent exposure), 782.04 (murder), 784.045 (aggravated battery), 812.133 (car jacking), or 812.135 (home invasion robbery) shall be required to submit blood specimens.

In the event the above sentence is to the Department of Corrections, the Sheriff of Dade County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes

The defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within 30 days from this date with the Clerk of this Court, and the defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

in imposing the above sentence, the Court further recommends SOUTH FLORIDA FACILITY.

DONE AND ORDERED in Open Court at Dade County, Florida, this 30TH day of OCTOBER, 2000.

[Signed: Stanford Blake]

_____

Judge
Stanford Blake

CLK/CT 405 REV 3/98

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 3 pages
(Date)

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA ☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA		
DIVISION ☒ CRIMINAL ☐ OTHER	JUDGMENT ☐ Withholding & Finding of Guilt ☒ Judgment ☒ Sentence ☐ Plea ☐ Probation ☐ Court Cost	CASE NUMBER 00-697
THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT		CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

THIS CAUSE HAVING COME BEFORE THE COURT to be heard pursuant to ORDER OF THE COURT and the Court being fully advised in the premise, it is thereupon
ORDERED AND ADJUDGED that the
☐ Withholding & Finding of Guilt
☒ Judgment
☒ Sentence
☐ Plea
☐ Probation
☐ Court Cost Previously entered on SEPTEMBER 15, 2000

☐ **REINSTATED**

and vacated on _____ be and the same is hereby reinstated.

☒ **VACATED**

be and hereby is vacated, set aside and held for naught.
FURTHER, THE COURT RESENTENCES THE DEFENDANT IN A SEPARATE ORDER HEREIN.

DONE AND ORDERED in Open Court at Dade County, Florida, this 30TH day of OCTOBER, 2000.

[Signed: Stanford Blake]

_____
Judge
Stanford Blake

FH 11/1/00

CLK/CT 127 REV 2/98

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

_____
(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

COMPLAINT/ARREST AFFIDAVIT
00 JAN-7 am 3:31

[Stamped: 00 JAN -7 AM 3:31 HOSPITAL SERVICE UNIT]
[Handwritten: 2 Pgs]

OBTS	☒ **Felony** ☒ **Misdemeanor** ☒ **Traffic** ☐ **Juvenile** ☐ **Warrant**	**Jail No** 1797	**Police Case No** 0180-00	
IDS No	**Agency Code** 11	**Municiple PD Del ID No**	**MDPD Records and ID No**	**Court Case No** F00697
Defendant's Name LEOCAL, JOSUE		**DOB** 12/10/55	**Sex** M	**Race** **B**
Ethnic	**Height** 506	**Weight** 185	**Hair** BLK	**Eyes** BRN
Local Address 1140 NE 161 Ter	N MIA BCH FL 33162	**Phone** 940 7140	**Alias**	
Permanent Address Same as Local			**Address Source** ☒ Drivers License ☐ Verbal ☐ Other ☐ Voter's ID	
Business Address UNK		**Phone** --	**Occupation** Labor	**Place of Birth** Haiti
Driver's License No L240 420	**Soc Sec No** 263 99 2211		**Scars, Tattoos, Unique Physical Feature** None Visible	

55 4500 FL		
Illegible ☐ **Yes** ☐ **No**	**Arrest Date** **mo/day/year** 01 / 07 / 00	**Arrest Time** 200 ☒ **AM** ☐ **PM**
Arrest Location (include name of business 103 ST N MIA AVE (RDWY)		**[ILLEGIBLE ROWS]**
Influence of Drugs ☐Yes ☐ No ☒ Unknown	ALIEN	**Resid Type** ☐ City ☐ Florida ☒ [Illegible] ☐ [Illegible]
Co-Defendants Last First Middle DOB mo/day/yr N/A _____ __/__/__		☐ In Custody ☐ At Large ☐ Felony ☐ Misdemeanor ☐ Juvenile
Drug Activity N N/A P Possess S Sell T Traffic R Smuggle D Dealer E Use K Dispense/Distribute M Manufacture/Produce/Cultivate B Buy Z Other		**Drug Type** N N/A A Amphetamine B Barbituate C Cocaine E Heroin H Hallucinogen M Marijuana O Opium Derv P Paraphenalia/Equipment U Unknown Z Other

Charges	Counts	Statute	[Illegible]	Violation Of Section
1. DUI	1	316.193	8649-KFQ	15-1
2. Battery on LEO	1	784.073		
3. Resisting w/Violence	1	843.01		
4. Open Container-Alcohol - in Motor Vehicle	1	30-210-1		
				Of the Code MIASHC

The undersigned certifies and swears that he has just and reasonable grounds to believe, and does believe that the above named Defendant
On the 07 day of Jan, 2000 at 125 A.M.]
(Time)

103 ST N MIA AVE (RDW)

committed the following violation of law. Narrative: (Be specific)

[HANDWRITTEN. D WAS DRIVING AN '85 PLYMOUTH 4 DR, BEARING FL TAG IBO 13J, N/B ON N. MIA AVE. D RAN THE FLASHING RED LIGHT (8648 KFQ) AT THE INTERSECTION OF 103 ST AND N. MIA AVE STRICKING VICTIM WESTON'S VEHICLE. VICTIM WESTON WAS TRAVELING W/B ON 103 ST. VICTIM WESTON WAS PINNED BEHIND THE STEERING WHEEL OF HIS VEHICLE AND HAD TO BE EXTRACTED BY MIA-DADE FIRE RESCUE. MDFR #30,

Page 1 of 3]

Hold for Other Agency
Agency _____ Verified by_____

☐ HOLD FOR BOND HEARING DO NOT BOND OUT (Officer Must Appear at Bond Hearing)

☐ I understand that should I willfully fail to appear before the court as a required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concern the time date and place of all court meanings should be sent to the above address as notify Family Division Juvenile Section; anytime that my address changes.

☐ You need not appear in court but must comply with the instructions on the reverse side herein.

_____
Signature

I swear that the above Statement is correct and true to the best of my knowledge and belief.

Ofc. Westbrook_____

Officer's Name (Print)

[Signature: Ofc. Westbrook]
Officer's Signature

MIA Shores
Department Name

0113 (11)
Court ID Number/Loc Code

Sworn to and subscribed before me the undersigned authority, this 07 day of Jan 2000

[Signature: Illegible 3979]
Deputy of the Court or Notary Public

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.]
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

COMPLAINT/ARREST AFFIDAVIT
CONTINUATION

[Handwritten

OBTS	**☒ Felony** **☒ Misdemeanor** **☒ Traffic** **☐Juvenile** **☐Warrant**	**Jail No** 1797	**Police Case No** 0180-00

IDS No	**Agency Code** 11	**Municiple PD Del ID No**	**MDPD Records and ID No**	**Court Case No** F00697
Defendant's Name LEOCAL, JOSUE		**DOB** 12/10/55		

Additional Charges	**Counts**	**Activity Type**	**Statute**	**[Illegible]**	**Violation Of Section**
DUI - Crash	1	N N	316.193	8650-KFQ	
DUI - Serious Bodily Inj.	1	N N	316.193	1001-KFR	15-1
					Of the Code MIASHC

[HANDWRITTEN: LT. DOUNN, PERFORMED THE EXTRACTION, AND TRANSPORTED VICTIM WESTON TO JMH-TRAUMA CENTER, FOR TREATMENT. WITNESS CAPO WAS TREATED ON

SCENE FOR MINOR LACERATIONS. MDFR #30 ALARM NUMBER 0003017. R/O OBSERVED HIM SITTING ON HIS VEHICLE AND HE APPEARED VERY CONFUSED. HE DID NOT REALIZE THAT HE WAS JUST INVOLVED IN A SERIOUS ACCIDENT. HE HAD A STRONG ODOR OF ALCOHOLIC BEVERAGE ON HIS BREATH AND BLOODSHOT/WATERY EYES. HE STATED HE WAS TIRED AND WANTED TO GO TO SLEEP. OFC. GIACOMONE OBSERVED A HALF EMPTY MINATURE BOTTLE OF JACK DANIEL'S WHISKEY LAYING ON THE DRIVERS' FLOOR BOARD OF HIS VEHICLE. AT THIS TIME HE VOLUNTARILY STATED TO SGT. MCLEOD, "I CAN NO LIE SARGE, I HAVE BEEN DRINKING TONIGHT." OFC. GIACOMONE ATTEMPTED TO OFFER FIELD SOBRIETY TESTS TO HIM, AT WHICH TIME HE SHOVED OFC. GIACOMONE IN THE CHEST. HE WAIVED HIS ARMS IN SUCH A MANNER AS TO PREVENT FROM BEING PLACED UNDER ARREST. HE ATTEMPTED TO PUSH R/O AND OFC. GIACOMONE AWAY FROM HIM, AT WHICH TIME HE WAS FORCIBLY PLACED UNDER ARREST. HE WAS TRANSPORTED TO WARD "D" WHERE]

Page 2 of 3]

Hold for Other Agency
Agency _____ Verified by_____

☐ HOLD FOR BOND HEARING DO NOT BOND OUT
(Officer Must Appear at Bond Hearing)
☐ I understand that should I willfully fail to appear before the court as a required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concern the time date and place of all court meanings should be sent to the

above address as notify Family Division Juvenile Section; anytime that my address changes.

☐ You need not appear in court but must comply with the instructions on the reverse side herein.

_____
Signature

I swear that the above Statement is correct and true to the best of my knowledge and belief.

Ofc. Westbrook_____
Officer's Name (Print)

[Signature: Ofc. Westbrook]
Officer's Signature

MIA Shores
Department Name

0113 (11)_____
Court ID Number/Loc Code

Sworn to and subscribed before me the undersigned authority, this 07 day of Jan 2000

[Signature: Illegible 3979]_____
Deputy of the Court or Notary Public

COMPLAINT/ARREST AFFIDAVIT CONTINUATION

OBTS	☒ Felony ☒ Misdemeanor ☒ Traffic ☐ Juvenile ☐ Warrant	Jail No 1797	Police Case No 0180-00

IDS No	Agency Code 11	Municiple PD Del ID No	MDPD Records and ID No	Court Case No F00697

Defendant's Name LEOCAL, JOSUE	DOB 12/10/55	

[HANDWRITTEN: NURSE PRACTIONER GARY THOMPSON DREW BLOOD FROM HIM. HE THEN WAS TRANSPORTED TO DCJ. * NOTE: WITNESS CAPO WAS THE FRONT, PASSENGER IN VICTIM WESTON'S VEHICLE.]

Page 3 of 3]

Hold for Other Agency
Agency _____ Verified by_____

☐ HOLD FOR BOND HEARING DO NOT BOND OUT
(Officer Must Appear at Bond Hearing)

☐ I understand that should I willfully fail to appear before the court as a required by this notice to appear that I may be

held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concern the time date and place of all court meanings should be sent to the above address as notify Family Division Juvenile Section; anytime that my address changes.

☐ You need not appear in court but must comply with the instructions on the reverse side herein.

_____
Signature

I swear that the above Statement is correct and true to the best of my knowledge and belief.

Ofc. Westbrook
Officer's Name (Print)

[Signature: Ofc. Westbrook]
Officer's Signature

MIA Shores
Department Name

0113 (11)
Court ID Number/Loc Code

Sworn to and subscribed before me the undersigned authority, this 07 day of Jan 2000

[Signature: Illegible 3979]
Deputy of the Court or Notary Public

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DATE COUNTY, FLORIDA FALL TERM, 1999

[Stamped: FILED
JAN 28 2000 CLERK]

THE STATE OF FLORIDA v.

JOSUE LEOCAL,

Defendant. **INFORMATION FOR**

1. DRIVING UNDER THE INFLUENCE CAUSING SERIQUS BODILY INJURY
316.193(3) (c) 2 FEL. 3D
2. DRIVING UNDER THE INFLUENCE CAUSING SERIOUS BODILY INJURY
316.193(3) (c) 2 FEL. 3D
3. BATTERY OF A LAW ENFORCEMENT OFFICER
784.07 & 784.03 FEL. 3D
4. RESISTING AN OFFICER WITH VIOLENCE
843.01 FEL. 3D

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

SETH LAVEY, Assistant State Attorney of the Eleventh Judicial Circuit, on the authority of **KATHERINE FERNANDEZ RUNDLE**, State Attorney, prosecuting for the State of Florida, in the County of Miami-Dade, under

oath, information makes that: JOSUE LEOCAL, on or about JANUARY 7, 2000, in the County and State aforesaid, did unlawfully drive or be in actual physical control of a motor vehicle in Miami-Dade County while under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, Fla. Stat., or any substance controlled under s. 893, Fla. Stat., when affected to the extent that said defendant's normal faculties were impaired and/or while having a blood or breath alcohol level of 0,08 percent or higher and by reason of operation of said motor vehicle did cause serious bodily injury to another, to wit: SUEN CAPO, being in violation of s. 316(3) (c)2, Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

f:CPCCases/00697.doc (jar) 01/27/00
CIRCUIT COURT DIRECT FILE
Jail # 00-1797; Bkd. 01/07/00; CIN 0470441; B/M,
DOB: 12/10/55, SS# 263-99-2211
F00-697
J/Blake (012)

COUNT 2

And the aforesaid Assistant State Attorney, under oath, further information makes that JOSUE LEOCAL, on or about JANUARY 7, 2000, in the County and State aforesaid, did unlawfully drive or be in actual physical control of a motor vehicle in Miami-Dade County while under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, Fla. Stat., or any substance controlled under s. 893, Fla. Stat., when affected to the extent that said defendant's normal faculties were impaired and/or while having a blood or breath alcohol level of 0.08 percent or higher and by reason of operation of said motor vehicle did cause serious bodily injury to another, to wit: THOMAS WESTON, being in violation of s. 316(3) (c)2, Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

COUNT 3

And the aforesaid Assistant State Attorney, under oath, further information makes that JOSUE LEOCAL, on or about JANUARY 7, 2000, in the County and State aforesaid, did unlawfully, feloniously and knowingly commit a battery upon OFFICER SERGIO CIACOMONE, a duly qualified law enforcement officer, while said person was then and there engaged in the lawful performance of duties, by actually and intentionally touching or striking said person against said person's will, in violation of s. 784.07 and s. 784.03, Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

COUNT 4

And the aforesaid Assistant State Attorney, under oath, makes that JOSUE LEOCAL, on or about JANUARY 7, 2000, in the County and State aforesaid, did unlawfully, knowingly, willfully and feloniously resist, obstruct or oppose OFFICERS SERGIO CIACOMONE and/or MATTHEW WESTBROOK, duly qualified law enforcement officers, in the lawful execution of a legal duty being performed by said officers, to wit: The detention and/or arrest of said defendant, and/or the investigation of said defendant for Driving Under the Influence, by the said defendant offering or doing violence to the persons of said officers, in violation of s. 843.01 Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA, COUNTY OF MIAMI-DADE:

Personally known to me and appeared before me, the Assistant State Attorney of the Eleventh Judicial Circuit of Florida whose signature appears below, being first duly sworn, says that the allegations set forth in this Information are based upon facts which have been sworn to as true, by a material witness or witnesses, and which if true, would constitute the offenses therein charged, and that this prosecution is instituted in good faith.

[Handwritten - Signature Illegible]
Assistant State Attorney
Florida Bar # 129739
1350 NW 12th Avenue, Miami, FL (305) 547-0100

Sworn to and subscribed before me this 28th day of Jan, 2000

By [Handwritten - Illegible]
Deputy Clerk for the Clerk of the Courts
Notary Public
[Handwritten - Number Illegible]

[Stamped - Seal Affixed:
CIRCUIT AND COUNTY COURTS,
Dade County Florida]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA		119
CRIMINAL DIVISION	UNIFORM COMMITMENT TO CUSTODY OF DEPARTMENT OF CORRECTIONS SPRING TERM, 1999	CASE NUMBER 00-697
THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT		CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID STATE, GREETING:

The above named defendant having been duly charged with the offense specified herein in the above styled court, and the defendant having been duly convicted and adjudged guilty of and sentenced for said offense by said Court, as appears form the attached certified copies of indictment/information, Judgment and Sentence which are hereby made parts hereof:

Now therefore, this is to command you, the said sheriff, to take and keep and, within a reasonable time after receiving this commitment, safely deliver the defendant, together with any pertinent Investigation Report prepared in this case, into the custody of the Department of Corrections of the State of Florida to Reception Center designated by the Department of Corrections; and this is to command you, the Department of

Corrections and other officials. to keep and safely imprison the defendant for the term of said sentence in the institution in the state correctional system to which you may cause the defendant to be conveyed or thereafter transferred. And these presents shall be your authority for the same. Herein fail not.

[Stamped:CIRCUIT AND COUNTY COURTS, Dade County Florida]

WITNESS the Honorable STANFORD BLAKE
Judge of said Court, and also, Clerk and Seal thereof, this 30TH day of OCTOBER, 2000.
HARVEY RUVIN, Clerk
By FRANKIE HAMILTON 5389, [Signed: Frankie Hamilton] Deputy Clerk

CLK/CT 403 6/94

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA ☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA		153
DIVISION ☒ CRIMINAL ☐ OTHER	JUDGMENT ☐ Probation Violator ☐ Community Control Violator ☐ Retrial ☐ Resentence	CASE NUMBER 00-697
THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT		CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

The Defendant. JOSUE LEOCAL , being personally before this Court represented by L. MARTIN, his attorney of record, and the State represented by J. DIMITRIS, Assistant State 's Attorney, and having:
☐ been tried and found guilty
☒ entered a plea of guilty
☐ entered a plea of nolo contendere
to the following crime(s):

COUNT	CRIME	OFFENSE STATUTE NO.	DEGREE OF CRIME	OBTS NO.
1 & 2	DRIVING UNDER THE INFLUENCE	316.193(3)(c)2	3F	

	CAUSING SERIOUS BODILY INJURY			

and no cause being shown why the Defendant should not be adjudicated guilty. IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

FH 11/1/00 Page 1 of 3

CLK/CT 401 REV 4/97

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA ☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA		
DIVISION ☒ CRIMINAL ☐ OTHER	CHARGES/COSTS/FEES	CASE NUMBER 00-697
THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT		CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

The Defendant is hereby ordered to pay the following sum if checked:

- ☐ Fifty dollars ($50.00) pursuant to F.S. 938.03 (Crimes Compensation Trust Fund).
- ☐ Five dollars ($5.00) as a court cost pursuant to F.S. 938.01 (1) $3.00, F.S. 938.15 $2.00 (Criminal Justice Trust & Education Funds).
- ☐ A fine in the sum of $ _____ pursuant to F.S. 775.0835. (This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as a part of a sentence to F.S. 775.083 are to be recorded on the Sentence page(s)).
- ☐ Twenty dollars ($20.00) pursuant to F.S. 938.09 (Handicapped and Elderly Security Assistance Trust Fund).
- ☐ A sum of $ _____ pursuant to 938.05 (Local Government Criminal Justice Trust Fund).

- ☐ Restitution in accordance to the attached order.
- ☐ Three dollars ($3.00) Juvenile Assessment Center pursuant to Dade County Ordinance 96-182, F.S. Incorporating F.S. 938.17.
- ☐ A sum of $_____ pursuant to F.S. 27.52 (Public Defender Application Fee).
- ☐ A sum of $_____ pursuant to F.S. 939.18 (Court Facilities Cost).
- ☐ A sum of $_____ pursuant to F.S. 938.06 (Crime Stopper's Programs).
- ☐ A sum of $_____ pursuant to F.S. 938.19 (Teen Courts).
- ☐ A sum of $_____ pursuant to F.S. 775.083 (Crime Prevention Programs).

Other COURT COSTS PREVIOUSLY IMPOSED ON SEPTEMBER 15, 2000

DONE AND ORDERED in Open Court in Dade County, Florida this 30TH day of OCTOBER, 2000.

[Signed: Stanford Blake]

JUDGE
STANFORD BLAKE

CLK/CT 413 REV 1/00

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 3 pages
(Date)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA		
CRIMINAL DIVISION	SENTENCE (AS TO COUNT 1)	CASE NUMBER 00-697 OBTS NUMBER
THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT		CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

The defendant, being personally before this Court, accompanied by his attorney, L. MARTIN, and having been adjudicated guilty herein, and the Court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown and the Court having:

☐ on _____ deferred imposition of sentence until this date.

(Check one)

☐ previously entered a judgment in this case on the defendant now resentences the defendant.

☐ placed the defendant on Probation/Community Control and having subsequently revoked the defendant's probation/Community Control.

IT IS THE SENTENCE OF THE COURT that the defendant:

☐ pay a fine of $_____, pursuant to F.S. 775.083, plus

$_____ as the 5% surcharge required by F.S. 938.04.

☒ is hereby committed to the custody of the Department of Corrections.

☐ is hereby committed to the custody of the Sheriff of Dade County, Florida.

☐ is sentenced as a youth offender in accordance with F.S. 958.04.

TO BE IMPRISONED (check one; unmarked sections are inapplicable)

☐ for a term of Natural Life.

☒ for a term of TWO POINT FIVE (2.5) YEARS.

☐ said SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

☐ IT IS FURTHER ORDERED that the entry of sentence be suspended as to count(s) _____of this case.

AS TO COUNT 2, THE DEFENDANT IS PLACED ON PROBATION IN A SEPARATE ORDER HEREIN.

Defendant LEOCAL
Case Number 00-697

If "split"sentence _x_ complete either of paragraphs

Followed by a period of TWO AND ONE HALF ($2_{1/2}$ YEARS on Probation XXXXXXXXXXXX under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

___ However, after serving a period of _____ imprisonment in ____, the balance of such sentence shall be suspended and the Defendant shall be placed on Probation/Community Control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count _____)

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY/MINIMUM PROVISIONS:

FIREARM:

____ Possession
____ Discharged
____ Discharged causing great bodily harm

SEMI-AUTOMATIC FIREARM OR MACHINE GUN:

____ Possession
____ Discharged
____ Discharged causing great bodily harm

It is further ordered that the _____ mandatory minimum imprisonment provisions of Florida Statute 775.087(2) are hereby imposed for the sentence specified in this count.

Drug Trafficking _____ It is further ordered that the ___ mandatory minimum imprisonment provision of Florida Statute 893.135(1) are hereby imposed for the sentence specified in this count.

CONTROLLED SUBSTANCE WITHIN 1000 FEET OF SCHOOL: _____ It is further ordered that the three year minimum imprisonment provisions of Florida Statute 893.13(1)(e)1, are hereby imposed for the sentence specified in this court.

FELONY OFFENDER: _____ The defendant is adjudicated a
__ habitual violent felony offender
__ violent career criminal
and has been sentenced to an extended term in accordance with the provision of Florida Statute 775.084(4). A minimum term of ___ year(s) must be served prior to release.

The requisite findings by the court are set forth in a separate order or stated on the record in open court.

REPEAT SEXUAL OFFENDER: _____ It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with Florida Statute 775.0823.

LAW ENFORCEMENT PROTECTION ACT:

____ AGGRAVATED ASSAULT UPON LAW ENFORCEMENT OFFICER

_____ AGGRAVATED BATTERY UPON LAW ENFORCEMENT OFFICER

It is further ordered that the defendant shall serve a minimum of:
___ 3 years provision of Florida Statute 784.07(2)(c)
___ 5 years provision of Florida Statute 784.07(2)(d)

AGGRAVATED ASSAULT or BATTERY UPON PERSON OVER 65 YEARS OF AGE: _____ It is further ordered that the defendant shall serve a minimum of three years or imprisonment before release, pay a fine of $_____, complete ____ hours of community service and make restitution to the victim in accordance with Florida Statute 784.08.

CAPITAL OFFENSE:	____	It is further ordered that the Defendant shall serve no less than 25 years in accordance with Florida Statute 775.082(1).
PRISON RELEASE REOFFENDER:	____	The defendant is adjudicated a Prison Release Reoffender and has been sentenced to a maximum term in accordance with the provision of Florida Statute 775.082(8). It is further ordered that the Defendant shall not be released until the expiration of the sentence.

(2) PAGE 2 of 3

Defendant JOS AL [HOLE PUNCHED]

Case Number 00-697

OTHER PROVISIONS

RETENTION OF JURISDICTION	____	The Court retains jurisdiction over the defendant pursuant to Florida Statutes 947.16(3).
JAIL CREDIT	__x__	It is further ordered that the Defendant shall be allowed a total of 253 days as credit for time incarcerated prior to imposition of this sentence.
PRISON CREDIT	_____	It is further ordered that the Defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.
CONSECUTIVE/ CONCURRENT AS TO OTHER COUNTS	____	It is further ordered that the sentence imposed for count(s) ____ shall run ___ consecutive to ___ concurrent with the sentence set forth in count(s) _____ of this case.

CONSECUTIVE/ CONCURRENT AS TO OTHER CONVICTIONS

____ It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run

____ consecutive to

____ concurrent with the following:

_____ Any active sentence being served.

_____ Specific sentences:

_____

_____

_____

BLOOD SAMPLE REQUIRED

____ It is ordered, pursuant to section 943.325, Florida Statutes, that the defendant, having been convicted of an attempt or offense under section 794 (sexual battery), 800 (lewdness or indecent exposure), 782.04 (murder), 784.045 (aggravated battery), 812.133 (car jacking), or 812.135 (home invasion robbery) shall be required to submit blood specimens.

In the event the above sentence is to the Department of Corrections, the Sheriff of Dade County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

In imposing the above sentence, the Court further recommends SOUTH FLORIDA FACILITY

_____

_____

_____

_____

DONE AND ORDERED in Open Court at Dade County, Florida, this 30th day of October ,xx2000

_____

JUDGE
STANFORD BLAKE

(3) PAGE 3 of 3

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 3 pages
(Date)

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL COURT IN AND FOR DADE COUNTY, FLORIDA ☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA		
DIVISION ☒ CRIMINAL ☐ OTHER	ORDER VACATING ☐ Withholding & Finding of Guilt ☒ Judgment ☒ Sentence ☐ Plea ☐ Probation ☐ Court Cost	CASE NUMBER 00-697
THE STATE OF FLORIDA VS. JOSUE LEOCAL PLAINTIFF DEFENDANT		CLOCK IN [Stamped: FILED NOV 06 2000 CLERK]

THIS CAUSE HAVING COME BEFORE THE COURT to be heard pursuant to ORDER OF THE COURT and the Court being fully advised in the premise, it is thereupon
ORDERED AND ADJUDGED that the
☐ Withholding & Finding of Guilt
☒ Judgment
☒ Sentence
☐ Plea
☐ Probation
☐ Court Cost Previously entered on SEPTEMBER 15, 2000

☐ **REINSTATED**

and vacated on _____ be and the same is hereby reinstated.

☒ **VACATED**

be and hereby is vacated, set aside and held for naught.
FURTHER, THE COURT RESENTENCES THE DEFENDANT IN A SEPARATE ORDER HEREIN.

DONE AND ORDERED in Open Court at Dade County, Florida, this 30TH day of OCTOBER, 2000.

[Signed: Stanford Blake]

_____
Judge
Stanford Blake

FH 11/1/00

CLK/CT 127 REV 2/98

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

_____
(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

COMPLAINT/ARREST AFFIDAVIT

[Stamped: 00 JAN -7 AM 3:31 HOSPITAL SERVICE UNIT]

OBTS	☒ **Felony** ☒ **Misdemeanor** ☒ **Traffic** ☐ **Juvenile** ☐ **Warrant**	**Jail No** 1797	**Police Case No** 0180-00

IDS No	**Agency Code** 11	**Municiple PD Del ID No**	**MDPD Records and ID No**	**Court Case No** F00697
Defendant's Name LEOCAL, JOSUE		**DOB** 12/10/55	**Sex** M	**Race** **B**
Ethnic	**Height** 506	**Weight** 185	**Hair** BLK	**Eyes** BRN
Local Address 1140 NE 161 Ter	N MIA BCH FL 33162	**Phone** 940 7140	**ALIAS**	
Permanent Address Same as Local			**Address Source** ☒ Drivers License ☐ Verbal ☐ Voter's ID ☐ Other _____	
Business Address UNK		**Phone** --	**Occupation** Labor	**Place of Birth** Haiti
Driver's License No L240 420	**Soc Sec No** 263 99 2211		**Scars, Tattoos, Unique Physical Features**	

55 4500 FL		None Visible
Illegible ☐ **Yes** ☐ **No**	**Arrest Date** **mo/day/year** 01 / 07 / 00	**Arrest Time** 200 ☒ **AM** ☐ **PM**
Arrest Location (include name of business 103 ST N MIA AVE (RDWY)		**[ILLEGIBLE ROWS]**

Influence of Drugs ☐Yes ☐ No ☒ Unknown	ALIEN	**Resid Type** ☐ City ☐ Florida ☒ [Illegible] ☐ [Illegible]

Co-Defendants Last First Middle DOB mo/day/yr N/A _____ __/__/____	☐ In Custody ☐ At Large ☐ Felony ☐ Misdemeanor ☐ Juvenile
Drug Activity N N/A P Possess S Sell T Traffic R Smuggle D Dealer E Use K Dispense/Distribute M Manufacture/Produce/Cultivate B Buy Z Other	**Drug Type** N N/A A Amphetamine B Barbituate C Cocaine E Heroin H Hallucinogen M Marijuana O Opium Derv P Paraphenalia/Equip ment U Unknown Z Other

Charges	Counts	Statute	[Illegible]	Violation Of Section
1. DUI	1	316.193	8649-KFQ	15-1
2. Battery on LEO	1	784.073		
3. Resisting w/Violence	1	843.01		
4. Open Container-Alcohol - in Motor Vehicle	1	30-210-1		
				Of the Code MIASHC

The undersigned certifies and swears that he has just and reasonable grounds to believe, and does believe that the above named Defendant
On the 07 day of Jan , 2000 At 125 A.M. 103 ST NMIA AVE
(Time)

committed the following violation of Law: Narrative:
(Be Specific)
[HANDWRITTEN: D WAS DRIVING AN '85 PLYMOUTH 4DR , BEARING FL TAB IBO 13J, N/B ON N. MIA AVE. D RAN THE FLASHING RED LIGHT (8648 KFQ) AT THE INTERSECTION OF 103 ST AND N.

MIA AVE STRIKING VICTIM WESTON'S VEHICLE. VICTIM WESTON WAS TRAVELING W/B ON 103 ST. VICTIM WESTON WAS PINNED BEHIND THE STEERING WHEEL OF HIS VEHICLE AND HAD TO BE EXTRACTED BY MIA-DADE FIRE RESCUE. MDFR #30,]

Hold for Other Agency
Agency _____ Verified by_____

☐ HOLD FOR BOND HEARING DO NOT BOND OUT
(Officer Must Appear at Bond Hearing)

☐ I understand that should I willfully fail to appear before the court as a required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concern the time date and place of all court meanings should be sent to the above address as notify Family Division Juvenile Section; anytime that my address changes.

☐ You need not appear in court but must comply with the instructions on the reverse side herein.

_____
Signature

I swear that the above Statement is correct and true to the best of my knowledge and belief.

Ofc. Westbrook_____
Officer's Name (Print)

[Signature: Ofc. Westbrook]

Officer's Signature

MIA Shores
Department Name

0113 (11)
Court ID Number/Loc Code

Sworn to and subscribed before me the undersigned authority, this 07 day of Jan 2000

[Signature: Illegible 3979]
Deputy of the Court or Notary Public

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

COMPLAINT/ARREST AFFIDAVIT
CONTINUATION

OBTS	☒ Felony ☒ Misdemeanor ☒ Traffic ☐ Juvenile ☐ Warrant	Jail No 1797	Police Case No 0180-00

IDS No	Agency Code 11	Municiple PD Del ID No	MDPD Records and ID No	Court Case No F00697

Defendant's Name LEOCAL, JOSUE	DOB 12/10/55

Addi-tional Charges	Activity Type	Counts	Statute	[Illegi-ble]	Violation of Section
DUI - Crash	N N	1	316.193	8650-KFQ	15-1
DUI - Serious Bodily Inj.	N N	1	316.193	1001-KFR	

				Of the Code MIASHOR

[HANDWRITTEN: LT. DOUNN, PERFORMED THE EXTRACTION, AND TRANSPORTED VICTIM WESTON TO JMH-TRAUMA CENTER, FOR

TREATMENT. WITNESS CAPO WAS TREATED ON SCENE FOR MINOR LACERATIONS. MDFR #30 ALARM NUMBER 0003017. R/O OBSERVED HIM SITTING ON HIS VEHICLE AND HE APPEARED VERY CONFUSED. HE DID NOT REALIZE THAT HE WAS JUST INVOLVED IN A SERIOUS ACCIDENT. HE HAD A STRONG ODOR OF ALCOHOLIC BEVERAGE ON HIS BREATH AND BLOODSHOT/WATERY EYES. HE STATED HE WAS TIRED AND WANTED TO GO TO SLEEP. OFC. GIACOMONE OBSERVED A HALF EMPTY MINATURE BOTTLE OF JACK DANIEL'S WHISKEY LAYING ON THE DRIVERS' FLOOR BOARD OF HIS VEHICLE. AT THIS TIME HE VOLUNTARILY STATED TO SGT. MCLEOD, "I CAN NO LIE SARGE, I HAVE BEEN DRINKING TONIGHT." OFC. GIACOMONE ATTEMPTED TO OFFER FIELD SOBRIETY TESTS TO HIM, AT WHICH TIME HE SHOVED OFC. GIACOMONE IN THE CHEST. HE WAIVED HIS ARMS IN SUCH A MANNER AS TO PREVENT FROM BEING PLACED UNDER ARREST. HE ATTEMPTED TO PUSH R/O AND OFC. GIACOMONE AWAY FROM HIM, AT WHICH TIME HE WAS FORCIBLY PLACED UNDER ARREST. HE WAS TRANSPORTED TO WARD "D" WHERE

Hold for Other Agency
Agency _____ Verified by_____

☐ HOLD FOR BOND HEARING DO NOT BOND OUT
(Officer Must Appear at Bond Hearing)

☐ I understand that should I willfully fail to appear before the court as a required by this notice to appear that I may be

held in contempt of court and a warrant for my arrest shall be issued. Furthermore, I agree that notice concern the time date and place of all court meanings should be sent to the above address as notify Family Division Juvenile Section; anytime that my address changes.

☐ You need not appear in court but must comply with the instructions on the reverse side herein.

_____
Signature

I swear that the above Statement is correct and true to the best of my knowledge and belief.

Ofc. Westbrook
Officer's Name (Print)

[Signature: Ofc. Westbrook]
Officer's Signature

MIA Shores
Department Name

0113 (11)
Court ID Number/Loc Code

Sworn to and subscribed before me the undersigned authority, this 07 day of Jan 2000

[Signature: Illegible 3979]
Deputy of the Court or Notary Public

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

_____
(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

COMPLAINT/ARREST AFFIDAVIT
CONTINUATION

[Handwritten

OBTS	**☒ Felony** **☒ Misdemeanor** **☒ Traffic** **☐ Juvenile** **☐ Warrant**	**Jail No** 1797	**Police Case No** 0180-00

IDS No	**Agency Code** 11	**Municiple PD Del ID No**	**MDPD Records and ID No**	**Court Case No** F00697

Defendant's Name LEOCAL, JOSUE	**DOB** 12/10/55	

NURSE PRACTIONER GARY THOMPSON DREW BLOOD FROM HIM. HE THEN WAS TRANSPORTED TO DCJ. * NOTE: WITNESS CAPO WAS THE FRONT, PASSENGER IN VICTIM WESTON'S VEHICLE.

Page 3 of 3]

Hold for Other Agency
Agency _____ Verified by_____

☐ HOLD FOR BOND HEARING DO NOT BOND OUT
(Officer Must Appear at Bond Hearing)

☐ I understand that should I willfully fail to appear before the court as a required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be

issued. Furthermore, I agree that notice concern the time date and place of all court meanings should be sent to the above address as notify Family Division Juvenile Section; anytime that my address changes.

☐ You need not appear in court but must comply with the instructions on the reverse side herein.

_____
Signature

I swear that the above Statement is correct and true to the best of my knowledge and belief.

Ofc. Westbrook_____
Officer's Name (Print)

[Signature: Ofc. Westbrook]
Officer's Signature

MIA Shores
Department Name

0113 (11)_____
Court ID Number/Loc Code

Sworn to and subscribed before me the undersigned authority, this 07 day of Jan 2000

[Signature: Illegible 3979]_____
Deputy of the Court or Notary Public

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DATE COUNTY, FLORIDA FALL TERM, 1999

[Stamped: FILED
JAN 28 2000 CLERK]

THE STATE OF FLORIDA v.

JOSUE LEOCAL,

Defendant. **INFORMATION FOR**

1. DRIVING UNDER THE INFLUENCE CAUSING SERIOUS BODILY INJURY
316.193(3) (c) 2 FEL. 3D
2. DRIVING UNDER THE INFLUENCE CAUSING SERIOUS BODILY INJURY
316.193(3) (c) 2 FEL. 3D
3. BATTERY OF A LAW ENFORCEMENT OFFICER
784.07 & 784.03 FEL. 3D
4. RESISTING AN OFFICER WITH VIOLENCE
843.01 FEL. 3D

[Handwritten: Items Nos. 1 and 2. are circled. Handwritten margin note says: **"DOUBLE THEY CAN NOT DO"**

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

SETH LAVEY, Assistant State Attorney of the Eleventh Judicial Circuit, on the authority of **KATHERINE**

FERNANDEZ RUNDLE, State Attorney, prosecuting for the State of Florida, in the County of Miami-Dade, under oath, information makes that: JOSUE LEOCAL, on or about JANUARY 7, 2000, in the County and State aforesaid, did unlawfully drive or be in actual physical control of a motor vehicle in Miami-Dade County while under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, Fla. Stat., or any substance controlled under s. 893, Fla. Stat., when affected to the extent that said defendant's normal faculties were impaired and/or while having a blood or breath alcohol level of 0,08 percent or higher and by reason of operation of said motor vehicle did cause serious bodily injury to another, to wit: SUEN CAPO, being in violation of s. 316(3) (c)2, Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

f:CPCCases/00697.doc (jar) 01/27/00
CIRCUIT COURT DIRECT FILE
Jail # 00-1797; Bkd. 01/07/00; CIN 0470441; B/M,
DOB: 12/10/55, SS# 263-99-2211
F00-697
J/Blake (012)

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

_____
(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

COUNT 2

And the aforesaid Assistant State Attorney, under oath, further information makes that JOSUE LEOCAL, on or about JANUARY 7, 2000, in the County and State aforesaid, did unlawfully drive or be in actual physical control of a motor vehicle in Miami-Dade County while under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, Fla. Stat., or any substance controlled under s. 893, Fla. Stat., when affected to the extent that said defendant's normal faculties were impaired and/or while having a blood or breath alcohol level of 0.08 percent or higher and by reason of operation of said motor vehicle did cause serious bodily injury to another, to wit: THOMAS WESTON, being in violation of s. 316(3) (c)2, Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

COUNT 3

And the aforesaid Assistant State Attorney, under oath, further information makes that JOSUE LEOCAL, on or about JANUARY 7, 2000, in the County and State aforesaid, did unlawfully, feloniously and knowingly commit a battery upon OFFICER SERGIO CIACOMONE, a duly qualified law enforcement officer, while said person was then and there engaged in the lawful performance of duties, by actually and intentionally touching or striking said person against said person's will, in violation of s. 784.07 and s. 784.03, Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

COUNT 4

And the aforesaid Assistant State Attorney, under oath, further information makes that JOSUE LEOCAL, on or about JANUARY 7, 2000, in the County and State aforesaid, did unlawfully, knowingly, willfully and feloniously resist, obstruct or oppose OFFICERS SERGIO CIACOMONE and/or MATTHEW WESTBROOK, duly qualified law enforcement officers, in the lawful execution of a legal duty being performed by said officers, to wit: The detention and/or arrest of said defendant, and/or the investigation of said defendant for Driving Under the Influence, by the said defendant offering or doing violence to the persons of said officers, in violation of s. 843.01 Fla. Stat., contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA, COUNTY OF MIAMI-DADE:

Personally known to me and appeared before me, the Assistant State Attorney of the Eleventh Judicial Circuit of Florida whose signature appears below, being first duly sworn, says that the allegations set forth in this Information are based upon facts which have been sworn to as true, by a material witness or witnesses, and which if true, would constitute the offenses therein charged, and that this prosecution is instituted in good faith.

[Handwritten - Signature Illegible]
Assistant State Attorney
Florida Bar # 129739
1350 NW 12th Avenue, Miami, FL (305) 547-0100

Sworn to and subscribed before me this 28th day of Jan, 2000

By [Handwritten - Illegible]
Deputy Clerk for the Clerk of the Courts
Notary Public
[Handwritten - Number Illegible]

[Stamped - Seal Affixed:
CIRCUIT AND COUNTY COURTS,
Dade County Florida]

[STAMPED: I HEREBY CERTIFY that the foregoing is a true and correct copy of the original document.
[Signed: Illegible]

(Signature of Immigration Officer)
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
Miami District
11-21-00 Total of 1 pages
(Date)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
155 South Miami Avenue, Suite 800
Miami, Florida 33130
(Hearing held via televideo to)
(Central Florida Reception Center, Orlando, Florida)

File No.: A 24 665 605 October 16, 2001

In the Matter of)
)
JOSUE LEOCAL,) IN REMOVAL PROCEEDINGS
)
Respondent)

CHARGE : Section 237(a)(2)(A)(iii), aggravated felony, after admission, as defined in Section 101(a)(43)(F)of the Act, to wit: a crime of violence as defined in Section 16 of Title 18 of the United States Code, for which a term of imprisonment imposed was one year or more.[1]

APPLICATION(s):, Withholding of Removal under Section 241(b)(3), and Withholding of Removal under Article 3 of the Convention Against Torture.

ON BEHALF OF RESPONDENT: ON BEHALF OF SERVICE:

[1] 'This matter comes outside of the jurisdiction of Chapa-Garza, v. INS, 243 F. 3d 921 (2001). Accordingly, as this occurs outside of the Fifth Circuit Court of Appeals, the law of the circuit applies, in this case, the 11th Circuit Court of Appeals. See Le v. INS, 196 F. 3d 1352 (1999).

Pro se[2]

Renata Aurelius, Esquire
Assistant District
Counsel
Immigration &
Nat. Service
7880 Biscayne Blvd.,
2nd Fl.
Miami, FL 33138

plm

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent in this case is a 45-year-old male native and citizen of Haiti, who was first issued a Notice To Appear (see Exhibit 1) by regular mail service on November 28th, 2000.

The respondent admitted certain of the allegations and denied certain of the allegations on April 17th, 2001.

The respondent did not admit that he was a native and citizen of Haiti. He did admit that he was paroled into the United States on or about August 5th of 1980, and that his status had been adjusted to that of a lawful permanent resident.

---

[2] The respondent in this case, first appeared before the Court on April 17th, 2001. The respondent had appeared previously on February 22nd, 2001, was advised of his rights, and, given an opportunity to find counsel. The respondent indicated that he was not able to find counsel. Accordingly, the Court, took pleadings in the respondent's case, on April 17th, 2001 and the respondent has proceeded on his own. It appears the respondent was simply unable to find counsel at no expense to the Government. Accordingly, the Court finds that the respondent has waived his right to counsel at no expense to the Government.

The Government offered a copy of the conviction records (see Exhibit 2), as well as a copy of the Form I-213 (see Exhibit 3), as well as the respondent's Form I-181, the Record of Creation of Lawful Permanent Residence (see Exhibit 4).

Based on Exhibits 2, 3 and 4, the Court sustained the charges, and found the respondent removable as charged.

The respondent was asked if he wished to designate a country of removal, and the respondent stated that he "designates anywhere other than Haiti".

The respondent was asked again to designate a country if he wished to do so.

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The respondent did not immediately designate a country of removal, after having been found to be removable, and, accordingly, the Court designated Haiti for the respondent.

The respondent was placed under oath, by the Court, and asked questions about his convictions.

The respondent explained the circumstances surrounding his convictions, and, the Court found that the respondent's testimony was not credible, based on certified court records that were submitted relating to the respondent's conviction (see Exhibit 2).

The Court found that the respondent also had been convicted of a particularly serious crime, and, took into

account the length of the sentence imposed, the type of crime involved, and whether or not the respondent was a danger to the community.

The Court found, after balancing these factors, that the respondent had, in fact, been convicted of a particularly serious crime.

The Court notes the respondent received a two and a half year sentence, for his conviction for driving under the influence causing serious bodily injury, and, additionally, that he received 253 days of credit for time served (see Exhibit 2).

Additionally, the Court notes that the respondent appears to have a problem with the use and abuse of alcohol, as apparently the respondent has been engaged, in a program for that in prison.

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The Court went through the application process with the respondent, and explained that he was eligible to apply for Deferral of Removal under Article 3 of the Convention Against Torture.

While the respondent's application (see Exhibit 5), checks the no box relating to torture, the fact that the respondent states that his parents were killed in his country, the Court reviewed, and adjudicated the application, in accordance with an official request under Article 3 of the Convention Against Torture.

The sole issue today is whether or not the respondent is eligible under the regulations for that form of relief.

FINDINGS OF FACT

The respondent testified as to his name, his marital status, and his children. A number of the respondent's family members appeared today. The respondent testified that he has three sons, and one daughter.

When asked about his occupation, he testified that he was a construction worker, a mechanic, and a welder.

The respondent stated that he went to prison on October 30th, 2000, and, that he had not had any problems with the law prior to that time.

The respondent testified that he arrived in the United States in 1980, coming with a cousin from Haiti. He testified that he was 24 years of age, after he departed.

plm

The respondent was asked about his highest level of education and, he stated he had five years of formal schooling, and that he learned a trade while he was in Haiti.

The respondent stated that he left Haiti because "things were not good for me." He testified, 111 had a cousin, so I left with him. He did not want me to leave me alone."

The respondent testified that both his mother and his father are deceased, and he testified that they apparently died during the chaos of the coup d'etat.

The respondent did not have death certificates, or pictures, of any funeral, stating, that no everyone in Haiti had cameras, and nothing was sent to him.

The respondent testified that he resided in the area of Robeteau with his parents prior to coming to the United States.

The respondent denied having left the United States to attend their funeral, and he testified, that he has not left the country since he came here.

The respondent testified that his father's occupation was that of a carpenter, and that his mother, worked in the home.

The respondent testified that he himself did not belong to any group or organization in Haiti, and there was no evidence presented that his mother or father belonged to any group or organization as well.

The respondent was asked the name of his cousin that he came with, and he gave his name as Gerald.

The respondent was asked if he had aunts or uncles in Haiti at this time. He testified that he didn't know, because he testified that he does not keep up with the people that are there.

The respondent was asked if he still feared returning to Haiti at this time. He testified affirmatively. When asked why this was, he testified, "based on my parents'

circumstances. The house of my parents is no longer there, it was burned down". He was asked how he knew this, and he testified that an aunt named Claudia had told him this.

The respondent stated that he had learned from her, that the house had been burned down.

The Court then asked the Government about the status of the charge, based on recent cases that have been decided. The Government relies on Le v. INS, supra, and notes, that the Matter of Chapa-Garza v. INS falls outside of the 11th Circuit, and is inapplicable in these proceedings.

On cross-examination, the Government asked a few questions.

The respondent was asked about his last contact with his aunt. He testified that she is deceased, and, when asked about what happened to his parents, he testified, "at that time, there was no police, no army, or anyone around."

The respondent was asked if he wished to say anything in addition regarding his case, and the respondent testified that

insurance paid for the damages, to the other vehicle that was involved in this accident, and he stated, and "I had no attorney", and "that's the reason I am where I am".

The Court asked the respondent if, in, fact, he did have an attorney (see Exhibit 2).

The respondent acknowledged having an attorney but stated, "he didn't do anything for me".

STATEMENT OF THE LAW

The Florida offense of driving under the influence, with serious bodily injury, is a "crime of violence" as required under the Immigration and Nationality Act, as a "aggravated felony" pursuant to Section 101(a)(43)(F), of the Act, and constitutes an aggravated felony, if the sentence is for one year or more.

In order to be eligible for withholding of removal, under the statute, the respondent must fear that it is "more likely than not" that his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or his political opinion.

In order to be eligible to pursue withholding of removal, under Section 241(b)(3)of the Immigration and Nationality Act, the respondent must not have been convicted of a "particularly serious crime". A particularly serious crime is determined after looking at the conviction itself, the term of

"more likely than not" that a government official, or someone acting under their consent, or acquiescence, would torture the respondent if he were to return. See Matter of S-V-, Int. Dec. 3430 (BIA May 9, 2000).

As evidence of eligibility under the Torture Convention, the Court can look to evidence including, but not limited to, evidence of past torture inflicted upon the applicant, evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured, evidence of gross, flagrant, or mass violations of human rights within the country of removal, or other relevant information regarding conditions in the country of removal.

Torture is defined as any act by which "severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or her, or a third person, information or a confession, punishing him, or her, for an act he or she, or a third person, has committed or is suspected of having committed, or intimidating, or coercing him, or her, or a third person, or, for any reason based on the discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent, or

acquiescence, of a public official or other person acting in an official capacity. Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman, or degrading treatment or punishment that do not amount to torture.

FINDINGS OF THE COURT

In this case, the Court finds that the respondent had, in fact, been convicted of a particularly serious crime.

The Court found the respondent's testimony, relating to his conviction, to not be credible. The Court notes, today, that the respondent has continued to make incredible statements relating to his conviction. The respondent contended when he was asked if there was anything else that he wished to add, regarding his conviction, that he did not have an attorney, and that is the reason that he is here.

When the respondent was asked questions, the respondent acknowledged that he did have, in fact, have an attorney, but "he didn't do anything for me".

There is no evidence to substantiate that contention in the record.

What is substantiated in the record, is the officiall record of conviction (see Exhibit 2), which notes that the respondent had been drinking heavily, was stopped, after having been in an accident, and, according to the officer's affidavit, apparently was not even aware that he had been in an accident.

In this case, the victim of the accident, had to be transported to the Jackson Memorial Hospital Trauma Center for treatment. Additionally, when the respondent had been approached regarding this event, the respondent became

argumentative, pushed a police officer, and, the officer had gone to the respondent, after detecting a strong odor of alcohol on his breath, and the fact that his eyes were bloodshot and watery. The respondent's only concern, immediately after the accident, was that he wanted to go to sleep.

The respondent became violent, and had to be forcibly restrained, and placed under arrest.

At that time, the respondent had to be transported to a special ward, where blood had to be forcibly taken, to determine that the respondent was intoxicated.

As stated, the record reflects, that the respondent did, in fact, have counsel, and, pled guilty to the offense, which the respondent also denied, resulting in a two and a half year prison sentence, as well as credit for time served, prior to the imposition of the two-and-a-half-year sentence, of 253 days, or, approximately three-quarters of one year. Under the circumstances, and the respondent's evasive statements, the Court finds the charge to be serious. The Court further finds, that the respondent's conviction is, in fact, for a crime of violence, and, based on evidence contained in the record, , that the

respondent still has an alcohol problem that he is receiving treatment for.

The respondent alleges that his insurance coverage paid for the damages, yet, this is not a mitigating factor.

The evidence is clear that serious injuries were involved, and, the respondent was apparently so drunk he was not able to be concerned about the individuals involved in the accident, rather, only wanted to sleep.

The Court finds, further, that the respondent, even if he were eligible to pursue a claim for withholding of removal under the statute, has failed to show that it is "more likely than not" that his life or freedom would be threatened in his country on account of a protected ground. The respondent testified that he fears returning to his country because of what occurred to his parents, apparently and immediately before, during, or immediately after the coup d'etat that took place in the early '90's.

The respondent testified that he was not a member of any group, or organization, and that, apparently, his parents were not members of any group or organization either.

The respondent testified that he learned from an aunt, now deceased, that the family home had been burned, and someone is renting the land. The respondent was not very clear, about his last communications with anyone in Haiti, and he did state, that he does not continue to speak to anyone there at this time.

Knowing that, even if he were eligible to pursue his claim, the Court would find that the respondent has failed to meet his burden of proof and persuasion, to establish eligibility for withholding of removal under the statute.

Turning to any potential claim under Article 3 of the Convention Against Torture, the respondent has failed to show that it is "more likely than not", that a government official, or someone acting under their consent and/or acquiescence, would torture the respondent if he were to return.

The Court notes that no claim has been made regarding prison conditions that exist in Haiti, and the issue, that has surfaced recently relating to the detention of individuals, that are deported from the United States to Haiti. The Court finds that no torture claim, exists, based on the evidence contained in the record.

The Court turns first, in its analysis, to any potential claim when reviewing the current Country Report (see Exhibit 8) for Haiti, specifically, at page 5 and following. The Country Report notes that since this past March 24th, individuals who have served sentences outside of Haiti, are kept in jail, with no time table for their eventual release. The reason given for this is that "preventative measures" are being taken to prevent "bandits" from increasing the level of insecurity and crime in the country. Haiti is a sovereign country. The duly elected government of Haiti, can take whatever action it deems

appropriate, to protect the safety of its citizens, within its boundaries.

The Court notes that while the Country Report states that prison conditions in Haiti are poor, it does note that they, as well as health care services, improving slowly".

Then the next regard, the definition of torture under offered to inmates "are the Court looks specifically, at the regulations. See 8 C. F. R. Section 208.18(a)(11, (2).

Under the regulations, torture is defined as "an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman, or degrading treatment or punishment that do not amount to torture".

The regulations continue further at sub part 3, "torture does not include pain or suffering arising only from an inherent or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture."

In this case, the Court finds, that simply detaining the respondent, upon return to his country, does not amount to torture, under the definitions contained in the regulations. The purpose listed in the Country Report, of detaining individuals, is not to torture them, it is to protect the public. The Country

plm

Report notes that international human rights organizations, in fact go to these institutions, and, as stated, the conditions in them are better.

While there is no evidence to establish, that different classes of individuals, are, in fact, detained, in this case, the respondent, not having been convicted of murder, theft, rape, robbery or other serious crime of violence, it is unlikely that the respondent would be detained at any length longer than individuals that have been convicted of such serious crimes.

While the Court does not condone the respondent's conviction, the injury, and ensuing costs, the Court notes, that it is unlikely that the respondent himself, would suffer, prolonged detention, or suffering, based on the conviction that he, in fact, has been convicted of in the United States.

Accordingly, after analyzing all of the factors, the case law, as well as the regulations, the Court finds that the respondent has failed to establish eligibility for relief under the Torture Convention, and, additionally, for withholding of removal under the statute, if the respondent were, in fact, eligible to pursue an application for that form of relief.

Accordingly, the following Orders are hereby

entered.

plm

ORDER

WHEREFORE IT IS HEREBY ORDERED that the respondent's Application for Withholding of Removal, under

Section 241(b)(3) of the Immigration and Nationality Act, be and is pretermitted.

FURTHER ORDER

WHEREFORE IT IS FURTHER ORDERED that the respondent's Application for Relief Under Article 3 of the Torture Convention be and is denied.

FURTHER ORDER

WHEREFORE IT IS FURTHER ORDERED that the respondent be removed from the United States to Haiti on the charges contained in the Notice To Appear.

[Signature: Rex. J. Ford]

REX J. FORD
United States Immigration Judge

DATED: October 16th, 2001.

A 24 655 605 15 October 16, 2001

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE REX J FORD, in the matter of:

JOSUE LEOCAL
A 24 655 605
Miami, Florida

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office For Immigration Review.

[Signature: Patrice L. McDonald]

(Patricia L. McDonald, Transcriber)
Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301)881-3344

November 26, 2001
(Completion Date)

IMMIGRATION COURT
155 SOUTH MIAMI AVE., ROOM 800
MIAMI, FL 33130

In the Matter of

Case No. : A24-665-605

*S-LEOCAL, JOSUE
Respondent IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on [Handwritten: 10/16/2001] this memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[X] The respondent was ordered removed from the United States to [Handwritten: Haiti] or in the alternative to [Handwritten: N/A]

[ ] Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of $
_____
with an alternate order of removal to

[ ] Respondent's application for asylum was ( ) granted ( ) denied ( ) withdrawn.

[X] Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) withdrawn. [(X) Handwritten: PRETERMITTED]

[ ] Respondent's application for cancellation of removal under section 241A(a) was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A(b)(1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn or ( ) other.

[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[X] Other: [Handwritten: DENIED].

Date: [Handwritten: 10/16/2001]

Appeal: Waived/ (Reserved) Appeal Due By:

[Handwritten: 11/15/2001]

[Signature: Rex J. Ford]
REX J. FORD
Immigration Judge

ALIEN NUMBER: 24-665-605
ALIEN NAME: *-LEOCAL, JOSUE

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M)
PERSONAL SERVICE (P)

TO: [X] ALIEN [ ] ALIEN c/o Customs Officer [ ]
ALIEN's ATT/REP [X] INS

DATE: [Handwritten: 10/16/2001] BY:
~~COURT STAFF~~ [Handwritten: Judge (RJF)]
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ]
Legal Services List [X] Other [Handwritten: Appeal (UI)]

U. S. Department of Justice
Executive Office for
Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration of Appeals

File: A24-665-605 -ORLANDO

Date: [STAMPED: APR 2 4 2002]

In re: *S-LEOCAL, JOSUE

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jeffrey S. Bucholtz

ON BEHALF OF SERVICE: Renata Terziev Aurelius

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. See 8 C.F.R. § 3.1(a)(7).

[Signature: Illegible]
FOR THE BOARD

[STAMPED: RECEIVED DEPARTMENT OF JUSTICE
2002 APR 26 AM 10:44
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
IMMIGRATION COURT
MIAMI, FLORIDA]

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A24 665 605 - Orlando Date: AUG 2 9 2002

In re: JOSUE LEOCAL

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT:
Jeffrey S. Bucholtz, Esquire,
Jeffrey T. Tao, Esquire
KING & SPALDING
1730 Pennsylvania Avenue, N.W.
Washington, DC 20006

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

APPLICATION: Reopening

By order dated April 24, 2002, this Board summarily affirmed the Immigration Judge's decision, dated October 16, 2001, finding the respondent removable as charged, denying his application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, denying his application for protection under Article 3 of

the Convention Against Torture (`the Convention"), 8 C.F.R. §§ 208.16-18 (2002), and ordering him removed to Haiti. Due to exceptional circumstances, however, we deem it appropriate to reopen the respondent's removal proceedings on our own motion, pursuant to 8 C.F.R. § 3.2(a).[3] Accordingly, we will vacate our April 24 decision and reinstate the respondent's appeal. We will also grant the respondent's motion to accept supplemental brief. The appeal will be dismissed.

As a threshold matter, we will address the respondent's challenge to the Immigration Judge's conclusion that he is removable as an alien convicted of an aggravated felony. On October 30, 2000, the respondent was convicted in the Circuit Court of Dade County, Florida, of the offense of driving under the influence with serious bodily injury, in violation of section 316.193(3)(c)(2) of the Florida Statutes, a third-degree felony for which he was sentenced, to a 2 ½-year term of imprisonment. *Exh.* 2. On the basis of this offense, the Immigration and Naturalization Service charged the respondent with removability as an alien convicted of an aggravated felony. Section 237(a)(2)(A)(iii) of the Act. The Immigration Judge sustained the charge of removability. We affirm.

The United States Court of Appeals for the Eleventh Circuit, in whose jurisdiction this proceeding arises, holds that the Florida offense of driving under the influence with

[3] Due to a clerical error, our April 24, 2002, decision was not served upon the respondent in the manner prescribed by 8 C.F.R. § 3.1(f). We are satisfied that this error materially prejudiced the respondent, warranting sua sponte reopening. Because we have reopened the respondent's removal proceedings sua sponte, his July 12, 2002, motion seeking re-issuance of our April 24 order is denied as moot.

serious bodily injury is a "crime of violence" under 18 U.S.C. § 16(a) and an aggravated felony under section 101(a)(43)(F) of the Act. *Le v. U.S. Attorney General,* 196 F.3d 1352 (11th Cir. 1999). Because the respondent was convicted under the identical statute at issue in *Le,* we conclude that *Le* is controlling authority in this case.

We are unpersuaded by the respondent's argument, advanced in his supplemental appellate brief, that *Le* has been superseded, or at least rendered distinguishable, by this Board's recent precedent decision in *Matter of Ramos,* 23 I&N Dec. 336 (BIA 2002), where we held that the Massachusetts offense of driving under the influence of intoxicating liquor was not an aggravated felony. We clearly stated in *Matter of Ramos* that we would "follow the law of the circuit in those circuits that have addressed the question whether driving under the influence is a crime of violence." Id. at 346-47. We made this statement because the meaning of the term "crime of violence" under 18 U.S.C. § 16 is a matter of federal criminal law, and we have long recognized our obligation to defer to circuit court interpretations of provisions of federal criminal law. *Matter of Yanez,* 23 I&N Dec. 390, 396-97 (BIA 2002); *Matter of Anselmo,* 20 I&N Dec. 25 (BIA 1989). Thus, the circuits need not defer to our reading of 18 U.S.C. § 16. *Adams Fruit Co., Inc. v. Barrett,* 494 U.S. 638 (1990) (explaining that deference does not extend to an agency's interpretation of a judicially enforceable portion of a statute). Because we lack authority to unilaterally modify the law of the Eleventh Circuit as it relates to federal criminal statutes such as 18 U.S.C. § 16, we will follow *Le* and affirm the Immigration Judge's finding of removability.

We also affirm the Immigration Judge's conclusion that the respondent failed to satisfy his burden of proving eligibility for withholding of removal under section

241(b)(3) of the Act or protection under the Convention. Specifically, the respondent failed to demonstrate either that it is more likely than not that his life or freedom will be threatened in Haiti on account of a protected ground, or that he will more likely than not be tortured in Haiti by or with the consent or acquiescence of a public official acting in an official capacity. 8 C.F.R. §§ 208.16(b), 208.16(c), 208.18(a) (2002). Because we agree with the Immigration Judge's decision denying the respondent's requests for withholding and deferral of removal on the merits, we need not decide whether the respondent's conviction for an aggravated felony constitutes a "particularly serious crime" under section 241(b)(3)(B)(ii) of the Act, so as to render him ineligible for withholding of removal.

Accordingly, the following orders shall be issued.

ORDER: This Board's April 24, 2002, decision is vacated, and the removal proceedings are reopened pursuant to 8 C.F.R. § 3.2(a).

FURTHER ORDER: The respondent's motion to accept supplemental brief is granted.

FURTHER ORDER: The respondent's appeal is dismissed, and the respondent is ordered removed to Haiti.

[Signature: Kevin A. Ohlson]

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N. W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give
Number Clerk Of Case
And Names of Parties

September 20,2002

MEMORANDUM TO COUNSEL OR PARTIES

RE: 02-14992 F Josue Leocal v. U. S. Attorney General
AGCY NO.: A24-665-605

After review of the agency's order and the petition for review, application for enforcement, or cross-application for enforcement, it appears that this court may lack jurisdiction over this appeal. If it is determined that this court is without jurisdiction, this appeal will be dismissed.

The parties are requested to simultaneously advise the court in writing within fourteen (14) days from the date of this letter of their position regarding the jurisdictional question(s) set forth on the attached page. An original plus three copies of any response should be filed. The responses must include a Certificate of Interested Persons and Corporate Disclosure Statement as described in Fed. R. App. P. 26.1 and the corresponding circuit rules. Requests for extensions of time to file a response may not be entertained. Please do not address any other issues on appeal at this time.

After fourteen (14) days, this court will consider any response(s) received and any portion of the record that may be required to resolve the jurisdictional issue(s). The parties will be advised by this office of the court's determination and of any further actions which may be required.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Mildred Norwood/
w1/404-335-6185

Encl.

JUR-7 (1-1999)

NO. 02-14992-F

JURISDICTIONAL QUESTION(S)

I. **What law governs judicial review of this petition for review:**

A. "The permanent rules" in Immigration and Nationality Act ("INA") § 242 et seq. (8 U. S. C. § 1252 et seq.), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act (" IIRIRA") § 306(a)(2), Pub. L. No. 104-208,110 Stat. 3009 (Sept. 30, 1996); or

B. "The transitional rules" in INA § 106 (8 U.S.C. § 1105a)and IIRIRA § 309(c)(4)(note to 8 U.S.C. § 1101)

See IIRIRA §§306(c)(1), 309(a)&(c)(l), as amended by technical correction Pub. L. 104-302, §2, 110 Stat. 3657 (Oct. 11, 1996); Lettman v. Reno, 168 F. 3d 463 (11th Cir.), vacated in part and reh'g granted, 185 F. 3d 1216 (11th Cir. 1999).

II. **Reviewability**

A. If the transitional rules govern:

1. Address whether IIRIRA § 309(c)(4)(G) limits this Court's jurisdiction over this petition for review. See Lettman, 168 F. 3d at 464-65.

2. If § 309(c)(4)(G) applies, address whether the specific constitutional challenges, if any, raised by petitioner, are reviewable. See Farauharson v. Attorney General, 246 F. 3d 1317, 1322 (11th Cir. 2001).

3. If petitioner seeks judicial review of the denial of discretionary relief, does IIRIRA § 309(c)(4)(E) preclude this Court's jurisdiction over that decision. See Al Najjar v. Ashcroft, 257 F. 3d 1262, 1297-98 (11th Cir. 2001).

B. If the permanent rules govern:

1. Address whether INA § 242(a)(2)(C) limits this Court's jurisdiction over this petition for review. See Calcano-Martinez v. INS, 533 U. S. 348,350-52, 121 S. Ct. 2268, 2269-70, 150 L. Ed.2d 392 (2001).

2. If § 242(a)(2)(C) applies, address whether the specific constitutional challenges, if any, raised by petitioner, are reviewable. See Brooks v. Ashcroft, 283 F. 3d 1268, 1273-75 (11th Cir. 2002).

3. If petitioner seeks judicial review of the denial of discretionary relief, does INA 3 242(a)(2)(B) preclude this Court's jurisdiction if the BIA did not exercise any discretion in denying the requested relief? Cf. Al Najiar, 257 F. 3d at 1297-98.

IN THE UNITED STATES COURT OF APPEALS,

FOR THE ELEVENTH CIRCUIT

NO. 02-14992-F

[STAMPED: FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT NOV 29 2002 THOMAS K. KHAN CLERK]

JOSUE LEOCAL,

Petitioner,

versus

U. S. ATTORNEY GENERAL,
IMMIGRATION AND NATURALIZATION SERVICE,

Respondents,

On Petition for Review of a Final Order of the Board of Immigration Appeals

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Before DUBINA, BARKETT, and MARCUS, Circuit Judges.

BY THE COURT:

The U. S. Attorney General's motion to dismiss the petition for review for lack of jurisdiction is CARRIED WITH THE CASE.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-14992
Non-Argument Calendar

Agency Docket No. A24-665-605

[STAMPED: June 30, 2003]

JOSUE LEOCAL,

Petitioner,

versus

U.S. ATTORNEY GENERAL,
IMMIGRATION AND NATURALIZATION
SERVICE;

Respondents.

On Petition for Review of A Final Decision of
the Board of Immigration Appeals

Before ANDERSON, BIRCH, and CARNES, Circuit Judges.

PER CURIAM:

Josue Leocal petitions for review of the Board of Immigration Appeals' ("BIA's") final removal order, entered August 29, 2002. The BIA ordered Leocal removed as an aggravated felon, finding that his conviction under Fla. Stat. § 316.193(3)(c)2 for driving under the influence ("DUI") causing serious bodily injury qualifies as a "crime of violence" under 18 U.S.C. § 16.

The government, arguing that we lack jurisdiction, moved to dismiss the petition. We agree.

We review our subject-matter jurisdiction de novo. See Brooks v. Ashcroft, 283 F.3d 1268, 1272 (11th Cir. 2002).

As Leocal's removal proceedings commenced in 2000, the permanent rules of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996) ("IIRIRA") govern his petition for review. See e.g., Brooks, 283 F.3d at 1272, n. 4 (The IIRIRA applies to removal proceedings initiated after April 1, 1997). Under the IIRIRA, judicial review of removal orders is more limited than it had been under the Immigration and Nationality Act ("INA"). 8 U.S.C. § 1252(a)(2)(C); See Calcano-Martinez v. Immigration & Naturalization Serv., 533 U.S. 348, 350, 121 S.Ct. 2268, 2270 (2001); Brooks, 283 F.3d at 1272. Given the limits of § 1252(a)(2)(C), we retain jurisdiction only to determine whether Leocal is "(1) an alien (2) who is removable (3) based on a conviction for an offense enumerated in the statute."[4] Galindo-Del Valle v. Attorney General, 213 F.3d 594, 598 (11th Cir. 2000), cert. denied, 533 U.S. 949 (2001). Among those offenses enumerated in the statute is 8 U.S.C. § 1227(a)(2)(A)(iii), which allows for removal of an alien convicted of an aggravated felony after admission into the United States. Thus, if Leocal is an alien who is removable based on an aggravated felony conviction, § 1252(a)(2)(C) divests us of jurisdiction to review the removal order. Leocal does not dispute that he is an alien, so we turn to the question of whether his conviction renders him removable as an aggravated felon.

[4] Notwithstanding the jurisdictional bar in § 1252(a)(2)(C), we retain jurisdiction to consider "substantial constitutional issues" arising out of the alien's removal proceedings. See Brooks, 283 F.3d at 1273. Leocal does not raise any constitutional issues on appeal.

The INA defines the term "aggravated felony" as "a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment is at least one year." 8 U.S.C. § 1101(a)(43)(F). Since Leocal received a 2 1/2 year prison sentence, the parties have focused on whether his conviction under Fla. Stat. § 316.193(3)(c)2 was for a "crime of violence" as defined by 18 U.S.C. § 16. In Le v. United States Attorney Gen., 196 F.3d 1352, 1354 (11th Cir. 1999), a panel of this Court squarely held that it is.

"[I]t is the firmly established rule of this Circuit that each succeeding panel is bound by the holding of the first panel to address an issue of law, unless and until that holding is overruled en banc, or by the Supreme Court." United States v. Hogan, 986 F.2d 1364, 1369 (11th Cir. 1993). Accordingly, Leocal's arguments as to the wisdom of the Le decision in light of BIA's new interpretation and the rulings of our sister Circuits are unavailing. Further, Leocal's arguments that we are not bound by Le because that panel deferred to the BIA's old interpretation are based on a misreading of Le. The Le Court did say that it would review the issue de novo but defer to a reasonable interpretation of the BIA. 196 F.23d at 1353-54. However, the Court's language and analysis clearly demonstrate that it made a binding, de novo determination that a DUI that causes serious bodily injury to another is a crime of violence. Id. at 1354.

We are divested of jurisdiction to review Leocal's removal order.

DISMISSED.